

GAHC010016742021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/639/2021

FULBAR RAHMAN
W/O- LT. HUSEN ALI, VILL- CHATALA, P.O. P. CHATALA, P.S. KALGACHIA,
DIST.- BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM AND 12 ORS
THROUGH THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM, PANCHAYAT
AND RURAL DEVELOPMENT DEPTT., DISPUR, GHY-6

2:THE DY. COMMISSIONER
BARPETA
DIST.- BARPETA
ASSAM

3:THE CHIEF EXECUTIVE OFFICER
BARPETA ZILLA PARISHAD
BARPETA
DIST.- BARPETA
ASSAM

4:THE EXECUTIVE OFFICER
MANDIA ANCHALIK PANCHAYAT
MANDIA
DIST.- BARPETA
ASSAM

5:THE PRESIDENT
MANDIA ANCHALIK PANCHAYAT
MANDIA
P.O. MANDIA
DIST.- BARPETA

ASSAM

6:THE SECRETARY
66 NO. CHATALA GAON PANCHAYAT
VILL- CHATALA
P.O. P. CHATALA
P.S. KALGACHIYA
DIST.- BARPETA
ASSAM

7:JOBEDA KHATUN
W/O- NASIR UDDIN
VILL- PATHAR CHALI
P.O. P. CHATALA
P.S. KALGACHIYA
DIST.- BARPETA
ASSAM
PIN- 781321

8:ALOMARA BEGUM
W/O- HAFIZ UDDIN
VILL- CHATALA
P.O. P. CHATALA
P.S. KALGACHIYA
DIST.- BARPETA
ASSAM
PIN- 781321

9:LAL VANU
W/O- AKTER HUSSAIN
VILL- CHATALA
P.O. P. CHATALA
P.S. KALGACHIYA
DIST.- BARPETA
ASSAM
PIN- 781321

10:NUR BHANU
W/O- ATOWAR RAHMAN
VILL- PATHAR CHALI
P.O. P. CHATALA
P.S. KALGACHIYA
DIST.- BARPETA
ASSAM
PIN- 781321

11:JURAN ALI
S/O- LIAKAT ALI

VILL- PATHAR CHALI
P.O. P. CHATALA
P.S. KALGACHIYA
DIST.- BARPETA
ASSAM
PIN- 781321

12:ABDUS SALAM
S/O- HASEN ALI
VILL- HAPACHAR
P.O. P. CHATALA
P.S. KALGACHIYA
DIST.- BARPETA
ASSAM
PIN- 781321

13:ISMAIL HUSSAIN
S/O- LT. HAZRAT ALI
VILL- HAPACHAR
P.O. P. CHATALA
P.S. KALGACHIYA
DIST.- BARPETA
ASSAM
PIN- 78132

For the Petitioner(s) : Mr. R. Ali, Advocate

For the Respondent(s) : Mr. N. K. Devnath, Advocate
: Mr. N. Uddin, Advocate

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 09.08.2023

1. The instant writ petition has been filed by the Petitioner challenging the Resolution dated 16.01.2021 adopted in the special meeting held on 16.01.2021 expressing No Confidence Motion against the Petitioner as well as the communication issued by the Executive Officer, Mandia Anchalik Panchayat to

the Chief Executive Officer, Barpeta Zilla Parishad dated 16.01.2021.

2. It has been submitted by Mr. N. K. Devnath, the learned Standing counsel appearing on behalf of the P&RD that pursuant to the communication dated 16.01.2021, the Petitioner has been removed and the Vice President of 66 No. Chatala Gaon Panchayat is presently discharging the functions of the President.

3. The facts involved in the instant case is that on 28.12.2020 seven members of the 66 No. Chatala Gaon Panchayat had issued a communication to the Secretary of the said Gaon Panchayat expressing their No Confidence upon the Petitioner who was the President of the said Gaon Panchayat. It further reveals from the record that on 12.01.2021, the Secretary of the Gaon Panchayat in question has issued a communication to the President/Executive Officer, Mandia Anchalik Panchayat, Mandia stating inter alia that the President i.e. the Petitioner had failed to convene the special meeting within 15 days and as such the said communication was forwarded for necessary action. Thereupon a meeting for No Confidence Motion was held on 16.01.2021 whereby the seven numbers of Members were present in the said meeting, who voted by secret ballot paper and expressed their No Confidence upon the Petitioner.

4. It further reveals that pursuant thereto, the Executive Officer, Mandia Anchalik Panchayat issued a communication to the Chief Executive Officer, Barpeta Zila Parishad on 16.01.2021 itself whereby the Minutes of the Meeting dated 16.01.2021 was forwarded and the attention was drawn to the said authority that the Petitioner who was the President of the Gaon Panchayat had lost confidence of the Gaon Panchayat Members by a majority of 2/3rd of the total number of members of the Gaon Panchayat. The Petitioner on coming to learn about the No Confidence Motion so adopted on 16.01.2021 as well as the

communication issued by the Executive Officer, Mandia Anchalik Panchayat to the Chief Executive Officer, Barpeta Zila Parishad has approached this Court by challenging the resolution adopted in the No Confidence Motion dated 16.01.2021 as well as the communication dated 16.01.2021 issued by the Executive Officer, Mandia Anchalik Panchayat and also sought for an interim order that the Deputy Commissioner, Barpeta should not act upon the said resolution. It is pertinent at this stage to mention that the communication dated 28.12.2020 forms a part of the writ petition.

5. It reveals from the records that this Court had only issued notice on 08.02.2021 but there was no interim order passed. Mr. N. K. Devnath, the learned Standing counsel for the P&RD stated that as there was no interim order passed, the Deputy Commissioner, Barpeta had removed the Petitioner and presently the Vice President of the Gaon Panchayat in question is discharging the functions of the President of the Gaon Panchayat.

6. The learned Standing counsel during the course of the hearing produced the records. From the records so produced, it reveals that on 28.12.2020, the notice was issued to the Secretary of the Gaon Panchayat expressing No Confidence by seven members. The record further reveals that on 29.12.2020, an attempt was made to serve the said notice upon the Petitioner and the Petitioner had refused. On 12.01.2021, the Secretary has issued the communication to the President/the Executive Officer of the Mandia Anchalik Panchayat, Mandia and thereupon the meeting was called on 16.01.2021 wherein the No Confidence Motion was passed against the Petitioner.

7. The question therefore arises as to whether the mandate under Section 15 of the Assam Panchayat Act, 1994 was duly complied with. The Petitioner categorically stated in the writ petition that there was no attempt made to serve

the notice upon the Petitioner at Paragraph 7 of the writ petition. There is no denial to such statements by the Respondents.

8. Be that as it may, it is relevant to take note of that even assuming that on 29.12.2021, an attempt was made to serve the notice upon the Petitioner and the Petitioner had refused, 15 days period thereafter would be on 13.01.2021. Under such circumstances, issuance of the communication dated 12.01.2021 by the Secretary amounts to an infraction to the provisions of Section 15(1) of the Assam Panchayat Act, 1994.

9. This Court in various judgments have opined that the provisions of Section 15 are mandatory in nature and as such taking into account that there has been an infraction to Section 15, this Court has no other option but to set aside the resolutions adopted in the meeting held on 16.01.2021 whereby the No Confidence Motion was expressed against the Petitioner as well as also the subsequent actions so taken on the basis thereof.

10. Accordingly, this Court therefore sets aside the resolution so adopted in the meeting dated 16.01.2021, communication dated 16.01.2021 issued by the Executive Officer, Mandia Anchalik Panchayat as well as also the subsequent actions so taken by the Deputy Commissioner, Barpeta thereby removing the Petitioner from the post of the President. In that view of the matter, the Petitioner is reinstated to the post of the President of 66 No. Chatala Gaon Panchayat .

11. This Court also is of the opinion that taking into account that the Petitioner now has knowledge that there is a notice of No Confidence being issued on 28.12.2020 as the said notice is a part of the writ petition, the Petitioner is therefore given the liberty to convene the meeting of the Gaon Panchayat in

terms with Section 15 of the Assam Panchayat Act, 1994 on or before 25.08.2023. It is made clear that if the Petitioner does not convene the said meeting, the Secretary of the Gaon Panchayat shall do the needful as required in terms with the provisions of Section 15 of the Assam Panchayat Act, 1994.

12. With above observations and directions, the instant writ petition accordingly stands disposed of.

13. The records so produced by Mr. N. K. Devnath is returned.

JUDGE

Comparing Assistant